

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 11, 2001

Court convened at 9:00a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

Clerk: W. Pasek

D036076 People v. Franklin

Cause called on merits. Jonathan Walkey, Esq. argued for appellant Franklin. David Delgado Rucci, Deputy Attorney General argued for respondent. Cause submitted.

D034670 People v. Sambrano

Cause called on merits. Diane Nichols, Esq. argued for appellant Sambrano. Jeffrey Koch, Deputy Attorney General argued for respondent. Ms. Nichols replied. Cause submitted.

D035079 Marriage of Harris and Beresh

Cause called on merits. Thomas Tighe, Esq. argued for appellant. Judith Klein, Esq. argued for respondent. Mr. Tighe replied. Cause submitted.

D037550 Tran et al. v. Friendly Hills Healthcare Network et al.

Cause called on merits. Neill O'Malley, Esq. argued for appellants Tran et al. Philip Ewen, Esq. argued for respondents Friendly Hills Healthcare Network et al. Mr. O'Malley replied. Cause submitted.

D035537 National Steel and Shipbuilding Company v. California Unemployment Insurance Appeals Board/United Waterfront Counsel of San Diego

Cause called on merits. Van Goodwin, Esq. argued for appellant NASSCO. David Rosenfeld, Esq. argued for intervenor/respondent United Waterfront Counsel of San Diego. Carolyn Fuson, Deputy Attorney General, argued for respondent California Unemployment Insurance Appeals Board. Mr. Goodwin replied. Cause submitted.

Court recessed at 10:17 am until 1:30 pm.

D036679 People v. Burkes

Judgment affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Huffman, J.

D038007 Erfani v. Superior Court of San Diego County/People

The petition is denied.

D037718 Fil-Cartoons et al. v. Superior Court of San Diego County/Virtualmagic Asia Inc.

The petition is denied.

D037845 In re Crespo on Habeas Corpus

The decision denying the petition became final as to this court on May 11, 2001, immediately upon filing. This court does not retain jurisdiction to modify the decision or rehear the matter. (Cal. Rules of Court, rule 24(a).) The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 11, 2001 (Continued)

D038043 McElroy et al., v. Superior Court of San Diego County/People

The petition is denied.

D035553 People v. Berry, Jr.

Affirmed. Haller, J.; I Concur: Nares, Acting P.J., I Concur and Dissent: McDonald, J. (opinion)

D035904 People v. Gomez

The trial court shall modify the abstract of judgment to reduce the restitution fine from the amount of \$16,800 to \$10,000 and to notify the Department of Corrections of this modification. Except as modified, the judgment is affirmed.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

Clerk: D. E. Moore

D034528 People v. Contreras

Cause called on merits. Carl Fabian, Esq. argued for appellant and submitted additional authorities. David Delgado-Rucci, Deputy Attorney General argued for respondent. Mr. Fabian replied. Cause submitted.

D034732 People v. Gillard

Cause called on merits. Carl Fabian, Esq. argued for appellant. Holly Wilkins, Deputy Attorney General argued for respondent. Mr. Fabian replied. Cause submitted.

D035174 People v. Van Pelt

D037325 In re Van Pelt on Habeas Corpus

Cause called on merits. Stuart A. Skelton, Esq. argued for appellant. Lilia E. Garcia, Deputy Attorney General argued for respondent. Mr. Skelton replied for appellant. Cause submitted as to appeal ONLY, D035174.

D035962 Ash v. Harbor II

Cause called on merits. Dan Lawton, Esq. argued for appellant. Norman B. Blumenthal, Esq. argued for respondent. Mr. Lawton replied. Cause submitted.

Court recessed at 2:50 p.m. until Tuesday, June 12, 2001 at 9 a.m.

D034438 People v. Jackson

The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

D036727 People v. Perez

Judgment affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 11, 2001 (Continued)

D034787 Argonaut Great Central Insurance Company v. St. Mar Enterprises, Inc. et al.
The request for publication of the opinion is denied.

D037728 Pope et al. v. Superior Court of San Diego County/Chicago Insurance Company
The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 12, 2001

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices
Gilbert Nares and Alex McDonald
Clerk: D. E. Moore

D036054 City of Vista Community Development Commission v. Hackbarth, Inc., et al.
Cause called on merits. LeRoy Andrew Abelson, Esq. argued for appellant. Bruce W. Beach, Esq.
argued for respondent. Mr. Abelson replied. Cause submitted.

Court recessed at 9:10 a.m. to change panel members. New panel members: The Honorable
Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and
Alex McDonald

D034423 People v. Hernandez
Cause called on merits. David K. Rankin, Esq. argued for appellant. Christine Gutierrez, Deputy
Attorney General argued for respondent. Mr. Rankin replied. Cause submitted.

D037542 White v. Lim
Cause called on merits. Raymond D. Kitlas, Esq. argued for appellant. Jim P. Mahacek, Esq. argued for
respondent, Lim. Richard Nakamura, Esq. argued for respondent, Liedle. Mr. Kitlas replied. Cause
submitted.

Court recessed at 9:50 a.m. to change panel members. New panel members: The Honorable
Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith Haller

D036817 C N A et al. v. Southern California Edison Company
Cause called on merits. Christopher W. Patterson, Esq. argued for appellant. Toni Rae Bruno, Esq.
argued for respondent, Southern California Edison Company. Tami Crosby, Esq. argued for respondent,
Cruces. Mr. Patterson replied. Cause submitted.

Court recessed at 10:30 a.m. until 1:30 p.m.

D037722 Bennett v. Superior Court of San Diego County/Whitney et al.
The petition is denied.

**D037682 Pacific Regent La Jolla Residential Condominium Association/Fountain La Jolla
Limited Partnership et al.**
The petition is denied.

D036082 People v. Alcala
The judgment is affirmed. McIntyre, J.; We Concur: Kremer, P.J., Benke, J.

D037002 Berry v. Corbett et al.
The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., McDonald, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 12, 2001 (Continued)

D036792 California Highway Patrol v. Workers' Compensation Appeals Board and Erebia

The portion of the WCAB's order denying reconsideration relevant to the assessment of a 10 percent penalty for the failure to pay interest is annulled. The remaining portions of the order are affirmed. The matter is remanded to the WCAB. CERTIFIED FOR PUBLICATION. Haller, J.;
We Concur: Kremer, P.J., McIntyre, J.

D037966 Barnette v. The Superior Court of San Diego County/The People

The petition is denied.

D035350 McKenna et al. v. USAA Insurance Company

Judgment reversed. Appellants to recover their costs of appeal. Benke, J.; We Concur: Kremer, P.J., Haller, J.

D038083 Jaymes G. v. Superior Court of San Diego County/San Diego County Health & Human Services Agency

The petition is denied.

D035596 People v. Little

The judgment in case number SCD148896 is reversed in full. The judgment in case number SCN104449 is reversed with respect to the sentence imposed and remanded for further proceedings consistent with the views expressed in this opinion. In all other respects, the judgment in SCN104449 is affirmed. Huffman, J.; We Concur: Kremer, P.J., McDonald, J.

D036806 Briglio v. Board of Dental Examiners

The judgment is affirmed. Board is awarded costs on appeal. Kremer, P.J.; We Concur: Benke, J., Haller, J.

D036276 People v. Davis

Judgment affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

D036996 Richards et al. v. The Splash

The judgment is reversed. Richards is awarded costs on appeal. Kremer, P.J.; We Concur: Huffman, J., Nares, N.

D037677 In re Nadeau on Habeas Corpus

The petition is denied.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D036846 In re Amanda P., a juvenile

Cause called on merits. Patti Dikes, Esq. argued for appellant. Kathryn Krug, Deputy County Counsel argued for respondent. Andrea St. Julian, Esq. argued for the minor. Ms. Dikes replied. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
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DIVISION ONE

June 12, 2001 (Continued)

D036820 Ikon Electronic Forms, Ltd. v. Veenstra et al.

Cause called on merits. John L. Dodd, Esq. argued for appellant. Morris Stephen Coontz, Esq. argued for respondent. Mr. Dodd replied. Cause submitted.

D036995 Resources Warehousing and Consolidation v. Tow

Cause called on merits. Gregory H. Halliday, Esq. argued for respondent. Michael Wayne Lodwick, Esq. argued for appellant. Cause submitted.

D037537 Crosby v. H. E. Sterling

Cause called on merits. Joseph D. McNeil, Esq. argued for appellant. Christina Fountain, Esq. argued for respondent. Mr. McNeil replied. Cause submitted.

Court recessed at 4 p.m. until Wednesday, June 13, 2001 at 9 a.m.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 13, 2001

D037040 People v. Tucker, Jr.

Judgment affirmed. Kremer, P.J.; We Concur: Benke, J., Nares, J.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

Clerk: D. E. Moore

D033607 Riel v. Wells Fargo Bank

Cause called on merits. Eric Erdman, Esq. argued for appellant. Karen Vogel, Esq. argued for respondent. Cause submitted.

Court recessed at 9:15 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D035747 People v. Goodman

Cause called on merits. Elizabeth Missakian, Esq. argued for appellant. Robert Foster, Deputy Attorney General argued for respondent. Ms. Missakian replied. Cause submitted.

D036744 City of San Diego v. WCAB

Matter called on merits. Thomas I. Hampton, Esq. argued for respondent, Molnar. Robert J. Mulcahy, Esq. argued for petitioner. Mr. Hampton replied. Matter submitted.

D037381 Service Employees International Union v. Superior Court

Matter called on merits. Jonathan Weissglass, Esq. argued for petitioner. Joseph Wiley, Esq. argued for respondent. Paula Elaine Meyer, Esq. argued for respondent. Mr. Weissglass replied. Matter submitted.

D036525 Balance Sports Corporation v. Fischl

Cause called on merits. Cameron Arakel Hopkins, Esq. argued for appellant. No appearance by respondent's counsel. Cause submitted.

Court recessed at 10:20 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares

Clerk: D. E. Moore

D035142 People v. Brown

Cause called on merits. Waldemar D. Halka, Esq. argued for appellant. Vincent Rabago, Deputy Attorney General argued for respondent. Mr. Halka replied. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
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DIVISION ONE

June 13, 2001 (Continued)

D037006 Premium Commercial Services Corporation v. First Financial Insurance Company
Cause called on merits. Angela Walsh, Esq. argued for appellant. Jim Williams, Esq. argued for respondent. Ms. Walsh replied. Cause submitted.

D037000 Foresight Capital Management, Inc. v. White
Cause called on merits. John L. Dodd, Esq. argued for appellant. Joanne M. Frasca, Esq. argued for appellant. Mr. Dodd replied. Cause submitted.

D035155 Bourianov v. Sinclair Oil Corporation
Cause called on merits. S. Charles Messer, Esq. argued for appellant. Sean Christy Cunningham, Esq. argued for respondent. Mr. Messer replied. Cause submitted.

D037547 AGNL, Inc. v. Homes by Tara, Inc.
Cause called on merits. Christopher R. Clark, Esq. argued for appellant. Michelle Lynn Carder, Esq. argued for respondent, Homes by Tara. Steven Anthony Ehrlich, Esq. argued for respondent, Huss. Mr. Clark replied. Cause submitted.

D033482 Duncan v. Duncan
Cause called on merits. Marjorie G. Fuller, Esq. argued for appellant/cross-respondent. Jerry Michael Cannon, Esq. argued for respondent/cross-appellant. Ms. Fuller replied. Mr. Cannon replied. Cause submitted.

Court recessed at 3:30 p.m. until Thursday, June 14, 2001 at 9 a.m.

D037509 Miller v. Superior Court of San Diego County/People
Petitioner's counsel informed the court by telephone that the petition for writ of mandate was moot. Despite request to do so, counsel has not filed a written request for dismissal. The petition for writ of mandate is dismissed as moot. The stay filed on March 21, 2001 is vacated.

D038088 Guardsmark, Inc. v. Superior Court of San Diego County/Meyer et al.
The petition is denied.

D036803 Kardashian v. Sharma
The judgment is modified such that the award of \$10,000 on the negligence cause of action is stricken. The judgment is affirmed in all other respects. The parties are to bear their own costs. McIntyre, J. We Concur: Nares, Acting P.J., O'Rourke, J.

D037153 Barragan v. Department of Motor Vehicles
Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is DISMISSED.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 14, 2001

Court convened at 9:00a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices
Gilbert Nares and Alex McDonald
Clerk: W. Pasek

D033510 People v. Garcia

Cause called on merits. Elizabeth Barranco, Esq. argued for Appellant Garcia. Warren Robinson, Deputy Attorney General, argued for Respondent. Ms. Barranco replied. Cause submitted.

D035162 People v. Placencia

D037200 In re Placencia on Habeas Corpus

Causes called on merits. Susan Keiser, Esq. argued for Appellant and petitioner Placencia. Leslie Fleming, Deputy Attorney General argued for Respondent. Ms. Keiser replied. Cause submitted as to appeal ONLY, D035162.

D036065 Estate of Kaila/Pihlajamaa v. Kaihlan

Cause called on merits. Jon Williams, Esq. argued for Appellant Pihlajamaa. Bruce Shields Ross, Esq. argued for Respondent Kaihlan. Mr. Williams replied. Cause submitted.

Court recessed for panel change.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices
Patricia Benke and Alex McDonald.
Clerk: W. Pasek

D035641 People v. Ramirez

Cause called on merits. Laura Schaefer, Esq. argued for Appellant Ramirez. Sarah Gros-Cloren, Deputy Attorney General, argued for Respondent. Ms. Schaefer replied. Cause submitted.

Court recessed at 10:24 a.m. until 1:30 p.m.

D037995 Maria G. v. Superior Court of the County of San Diego/San Diego County Health and Human Services Agency.

The attorney for petitioner Maria G. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D037954 Jeffrey E. v. Superior Court of the County of San Diego County/San Diego County Health and Human Services Agency.

The attorney for petitioner Jeffrey E. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 14, 2001 (Continued)

D037533 Key v. Monshizadeh et al.

The judgment and order are affirmed. The defendants are to recover their costs of appeal. McIntyre, J.
We Concur: Huffman, Acting P.J., O'Rourke, J.

D034916 People v. Cochran

It is ordered that the opinion filed on May 17, 2001, is modified. Respondent's petition for rehearing is denied. Cochran's conviction of section 311.4, subdivision (b) is ordered modified to a conviction of section 311.4, subdivision (c) and, as modified, the judgment is affirmed.

D035597 People v. Walter

The appeal is dismissed. Huffman, J.; We Concur: Kremer, P.J., Benke, J.

D038089 Polselli v. Superior Court of San Diego County/People

The petition is denied.

D038092 In re Polselli on Habeas Corpus

The petition is denied.

D038801 Velarde et al. v. Western Auto Supply Company, Inc., et al.

The judgment is affirmed. The defendants are to recover their costs on appeal. McIntyre, J.;
We Concur: Haller, Acting P.J., O'Rourke, J.

D037237 In re Russell on Habeas Corpus

The petition is denied without prejudice.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and the Honorable Associate Justices
Gilbert Nares and Alex McDonald
Clerk: W. Pasek

D037549 Haskell et al. v. Peterson et al.

Cause called on merits. Ilse DiPinto, Esq. argued for appellants. Laurence Nokes, Esq. argued for respondents. Ms. DiPinto replied. Appellant's request for judicial notice is denied. Cause submitted.

D036615 Oregel v. America Isuzu Motors, Inc.

Cause called on merits. Christopher J. Workman, Esq. argued for appellant. Michael Edward Lindsey, Esq. argued for respondent. Mr. Workman replied. Cause submitted.

D037553 Michelson v. Richardson et al.

Cause called on merits. Ian Herzog, Esq. argued for appellant. Mario Mainero, Esq. argued for respondent Capital Equity Investment, Inc. Kenneth Bernard, Esq. argued for respondents Richardson et al. Mr. Herzog replied. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 14, 2001 (Continued)

Court adjourned at 2:36 p.m. until Friday, June 15, 2001 at 9:00 a.m.

D033178 People v. Jefferson

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., McDonald, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 15, 2001

Court convened at 9 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices
Gilbert Nares and Alex McDonald

Clerk: D. E. Moore

D035030 People v. Lopez

Cause called on merits. Glen Niemy, Esq. argued for appellant. Charles Ragland, Deputy Attorney
General argued for respondent. Cause submitted.

D035618 Scripps Health v. Andros International, Inc.

Cause called on merits. Richard J. Scuba, Esq. argued for appellant. Debra Kornheiser, Esq. argued for
respondent. Mr. Scuba replied. Cause submitted.

D037535 Medix Ambulance Service v. City of Orange

Cause called on merits. Michael Leight, Esq. was present for appellant/cross-respondent. No appearance
by counsel for respondent/cross-appellant. Oral argument to be recalendared in July.

D035818 Levine v. The Guardian Life Insurance Company

Cause called on merits. Howard Finkelstein, Esq. argued for appellant. Jeffrey Shohet, Esq. argued for
respondent. Mr. Finkelstein replied. Cause submitted.

Court recessed at 10:10 a.m. until 1:30 p.m.

D036807 Ippolito v. Ventana et al.

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., McDonald, J.

D035420 People v. McClelland

The judgment is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Benke, J.

D037161 Morson et al. v. Superior Court of San Diego County/Medline et al.

The petition is denied. Each party to bear its own costs. Huffman, J.; We Concur: Kremer, P.J., Nares,
J.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices
Richard Huffman and Gilbert Nares

Clerk: D. E. Moore

D036455 People v. Guzman

Cause called on merits. Amanda Doerrer, Esq. argued for appellant. David Williams, Certified Law
Student from Attorney General's Office argued for respondent. Mr. Doerrer replied. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 15, 2001 (Cont'd)

D035484 Whitney v. Sfregola

Cause called on merits. Robert Alan Fairfield, Esq. argued for appellant. Jack H. Kaufman, Esq. argued for respondent. Mr. Fairfield replied. Cause submitted.

D035239 San Diego Housing Commission v. Industrial Indemnity Company

Cause called on merits. Thomas W. Byron, Esq. argued for appellant/cross-respondent. Charles B. Christensen, Esq. argued for respondent/cross-appellant. Sean Schwerdtfeger, Esq. argued on cross-appeal. Mr. Byron replied. Mr. Schwerdtfeger replied. Cause submitted.

Court adjourned at 3 p.m.

D035338 People v. Polselli

D036940 In re Polselli

The petition for writ of habeas corpus, In re Polselli, D036940, is consolidated with the appeal People v. Polselli, D035338, for disposition.

D035338 People v. Polselli

D036940 In re Polselli

The trial court judgment is modified to impose a concurrent six months in custody for the misdemeanor. The court shall modify the abstract of judgment and advise the Department of Corrections of the modification. The judgment is affirmed as modified. The petition is denied. Kremer, P.J.; We Concur: Benke, J., Huffman, J.

D036067 People v. Komori

The judgment is affirmed. McDonald, J.; We Concur: Haller, Acting P.J., McIntyre, J.